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February 22, 2000

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FEDERAL COMMUNICATIONS COMMISSION
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REDACTED—FOR PUBLIC INSPECTION

Re: Reply Comments of Rhythms NetConnections Inc.; CC Docket No. 00-4


Dear Ms. Salas:

Pursuant to the Commission's Public Notice (DA 00-37) dated January 10, 2000, we are filing today, on behalf of Rhythms NetConnections Inc. ("Rhythms"), the following documents: (1) a single copy of the portions of Rhythms' Reply Comments containing confidential information (with a cover letter stamped "Confidential—Not for Public Inspection"); (2) one original and two copies of the entire submission with confidential information redacted (with a cover letter stamped "Redacted—For Public Inspection"). Enclosed with the redacted version is a 3.5" computer diskette with the document in Word 97 read-only format.

As indicated on the attached service list, copies of Rhythms' Reply Comments are being served on the Texas Public Utilities Commission and on the Department of Justice.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Respectfully submitted,


Larry A. Blosser

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FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 00-4

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Dated: February 22, 2000

SUMMARY

Southwestern Bell Telephone Company's Section 271 application is fatally flawed and should be rejected. Commenters, including the Department of Justice, agree that SWBT has failed to make the required showing for approval of its application. SWBT has not demonstrated that it is providing non-discriminatory access to CLECs for at least two checklist items – OSS and unbundled loops for DSL. Indeed, SWBT's own data, though extremely limited, shows clear instances of discrimination in which SWBT's performance for its own retail operations is several magnitudes better than performance for CLECS. SWBT has also failed to demonstrate that it has in place a fully operational, separate subsidiary for advanced services.

SWBT's application for Section 271 authority is premature and, on this record, the Commission should decline to approve SWBT's application until such time as SWBT demonstrates that it has fully complied with all checklist items and irreversibly opened its local market to competition, including specifically, advanced services competition.

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LIST OF ATTACHMENTS

DOCUMENT	SUBJECT MATTER	LOCATION
<u>Attachment A:</u> Notification of Unresolved Issues in Dispute Regarding Southwestern Bell Corporation's Phase I Plan of Record, February 7, 2000 ["CLEC POR Notification"]	Status of SBC's Binder Group Management/ Selective Feeder System (Transcript of February 1-2 OSS xDSL POR Workshop)	Pages 570- 572 of "Attachment A"
<u>Attachment A:</u> CLEC POR Notification	Loop Qualification Data Elements Available to SWBT Retail Personnel but Not Available to CLECS	Pages 140, 142-144 of "Attachment A"
<u>Attachment B:</u> Addendum to OSS Plan of Record for Pre- Ordering and Ordering of xDSL and Other Advanced Services, February 7, 2000. ["POR Addendum"]	Status of SWBT Development of Fully Mechanized OSS for xDSL Loops, DataGate and EDI Enhancements.	Exhibit II Revised FMO Timeline.
<u>Attachment B:</u> POR Addendum	Loop Qualification Data Elements Available to SWBT Retail Personnel but Not Available to CLECS	Pages 1-2
<u>Attachment C:</u> Supplemental Affidavit of Ann M. Lopez in Support of Comments of Rhythms Links, Inc. ["Lopez Affidavit"]	Availability and Accuracy of SBC's CLEC-Specific Performance Data	Paras. 2-16
<u>Attachment C:</u> Lopez Affidavit	Inadequacies of Texas Performance Measures	Paras. 17-19
<u>Attachment C:</u> Lopez Affidavit	Intervals for Conditioning DSL Loops	Paras. 20-23
<u>Attachment C:</u> Lopez Affidavit	SWBT Process Changes	Paras. 24-26

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company, and)	CC Docket No. 00-4
Southwestern Bell Communications Services,)	
Inc. d/b/a Southwestern Bell Long Distance)	
for Provision of In-Region, InterLATA)	
Services in Texas)	

**RHYTHMS NETCONNECTIONS INC.
REPLY COMMENTS IN OPPOSITION**

Rhythms NetConnections Inc., and Rhythms Links Inc. (formerly ACI Corp.)
(collectively "Rhythms") hereby submit these reply comments opposing the application of SBC Communications Inc., Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. (collectively, "SBC") for authority to provide in-region, interLATA services in Texas.

INTRODUCTION

DSL commenters are in unanimous agreement that SWBT has failed to satisfy all of its obligations under the § 271 checklist.¹ The Department of Justice ("DOJ") agrees and opposes approval of SWBT's Section 271 application.² SWBT's application is fatally flawed because SWBT has not demonstrated that it is providing two crucial checklist items — non-discriminatory access to unbundled loops and Operations Support Systems ("OSS") — to

¹ A Bell operating company ("BOC") seeking approval of a Section 271 application must demonstrate that it has met each of the elements of the 14-point competitive checklist in section 271(c)(2)(b). 47 U.S.C. §271(c)(2)(b).

² Evaluation of the United States Department of Justice, February 14, 2000 at 53 ["DOJ Evaluation"].

competitive local exchange carriers (“CLECs”) providing advanced services using digital subscriber line (“DSL”) technologies. Further, SWBT has failed to demonstrate it has in place a fully operational, separate subsidiary through which it offers advanced services, as required to meet Section 272 of the Telecommunications Act of 1996 (“the Act”).³

Under the requirements of the Federal Communications Commission (“FCC” or “Commission”) set forth in the *BA-NY 271 Order*,⁴ all applicants seeking Section 271 authority must meet a higher standard of proof with regard to advanced services generally, and specifically with respect to xDSL performance. The Commission requires the incumbent BOC to make “a separate and comprehensive showing with respect to the provision of xDSL-capable loops.”⁵ The Commission underscored its intention to thoroughly review an incumbent local exchange carrier’s (“ILEC’s”) performance in the advanced services market in the *BA-NY 271 Order*: “Given our *statutory obligation* to encourage the deployment of advanced services and the critical importance of the provisioning of xDSL loops to development of the advanced services marketplace, we *emphasize our intention to examine this issue closely in the future*.”⁶ That future is now.

As the DOJ accurately concludes in its comments, SWBT’s 271 application clearly cannot pass the Commission’s examination set forth in the *BA-NY 271 Order*.⁷ SWBT’s application was incomplete and contained substantial errors, as evidenced by the more than

³ 47 U.S.C. § 272(d)(3)(B); see Comments of Rhythms NetConnections Inc. In Opposition To Application of Southwestern Bell Corporation For Provision of In-Region InterLATA Services In Texas, January 31, 2000 at 47, 60-64 [“Rhythms”].

⁴ *In The Matter of Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) [“*BA-NY 271 Order*”].

⁵ *BA-NY 271 Order* ¶ 330.

⁶ *BA-NY 271 Order* ¶ 330 (emphasis added).

⁷ DOJ Evaluation at 11, 43-44.

2,000 pages of ex parte materials filed after the date of its Section 271 application. Under the Commission's "complete as filed rule," an ILEC applying for Section 271 authority must make a complete and thorough showing and may not continue to submit necessary materials essential to its application on a rolling basis.⁸

Even with the voluminous late-filed information, SWBT has failed to demonstrate that it has fully complied with checklist items of critical importance to data CLECs, including checklist items 2 and 4. The record in this proceeding, including the Texas PUC's own filing, clearly demonstrates that the Texas PUC had insufficient data with which to verify that SWBT was meeting its Section 271 competitive checklist obligations for either provision of OSS or unbundled loops for xDSL service.⁹ The lack of xDSL-specific data cannot be attributed to any "special circumstances" like those the Commission relied upon in granting the Bell Atlantic application in New York. Indeed, the lack of xDSL-specific data in Texas is directly attributable to SWBT's prolonged use of every available tactic to delay the onset of DSL competition in Texas. SWBT has repeatedly delayed, forestalled and impeded every effort of xDSL competitors to gain access to the Texas market, as exemplified by the nearly two-year effort by Rhythms and Covad to obtain an interconnection agreement containing xDSL-specific rates terms and conditions from SWBT.

Further, what little data do exist show SWBT's OSS are not reliable, and are not capable of supporting CLEC orders for xDSL at commercial volumes. SWBT's own data show a disturbing, precipitous trend of declining performance of SWBT's OSS with even modest increases in orders at very low volumes. This significant decrease in OSS performance, coupled

⁸See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, at ¶ 51 (1997). [*"Ameritech Michigan Order"*].

with “a significant risk that these problems may become even more acute” lead the Department of Justice to conclude that SWBT has failed to demonstrate it is providing non-discriminatory access to xDSL loops.¹⁰

Because the commercial data demonstrate there is little xDSL competition in Texas, the Texas PUC instead relied almost exclusively on SWBT’s “commitments” and “assurances” of future action as a basis for approving SWBT’s Section 271 application. However, the Commission has made clear that such promises of future performance have no probative value and are not entitled to any weight.¹¹ Thus, SWBT may not rely on promises of future performance to meet its obligations under Section 271 of the Act. Even if paper promises were adequate, SWBT’s past anticompetitive conduct strongly argues against accepting such future assurances. In order for SWBT’s promises to have any meaning, it would have to undergo a transformation and cooperate fully with its competitors.

The Commission should not believe for a moment that assurances made in order to gain authority to enter the long distance market would be efficiently carried out. Indeed, SBC’s pattern of non-cooperation and delay suggest otherwise.¹² For example, SWBT has delayed carrying out its obligations under the Commission’s *Line Sharing Order*¹³ and the Texas PUC’s award in the Rhythms/Covad arbitration in Texas. Both orders required SBC to immediately

⁹ See, e.g., Covad at 20; DSL.net at 5-6; NorthPoint at 8, Texas PUC at 64.

¹⁰ DOJ Evaluation at 36.

¹¹ *BA-NY 271 Order* ¶ 37.

¹² In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For consent to Transfer For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, (rel. October 8, 1999) [*“Merger Order”*], ¶ 15.

¹³ In the matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order*, CC Docket No. 98-147 and *Fourth Report and Order* in CC Docket No. 96-98, (rel. Dec. 9, 1999)[*“Line Sharing Order”*].

dismantle its Binder Group Management/Selective Feeder Separation system (“BGM/SFS”). However, SBC personnel indicated, on record, during SBC’s Plan of Record (“POR”) meetings earlier this month that it has not yet dismantled the BGM/SFS system, and it had no details regarding when SBC would do so.¹⁴ SWBT’s past performance is a far better predictor of its future performance than any “assurances” it has made or will make in its effort to gain entry into the long distance market.

Given the record in this proceeding, the course the Commission must follow is clear. The Commission must deny SWBT’s Section 271 application. The record demonstrates that SWBT has not met its checklist obligations. The Department of Justice, whose evaluation is entitled to substantial weight, urges that the application be denied.¹⁵ The Commission should decline to grant SWBT’s Section 271 application until such time as SWBT demonstrates that it has fully complied with all checklist items and irreversibly opened its local market to competition, including specifically, advanced services competition.

DISCUSSION

I. SWBT FAILS TO PROVIDE ACCESS TO OSS IN A MANNER THAT SATISFIES ITEM TWO OF THE COMPETITIVE CHECKLIST

The Commission has recognized that, absent nondiscriminatory access to OSS, CLECs “will be severely disadvantaged, if not precluded altogether from fairly competing in the local market.”¹⁶ Commenters agree that SWBT’s OSS do not presently provide CLECs in general, or data CLECs in particular, with nondiscriminatory access to systems necessary to effectively

¹⁴ Notification of Unresolved Issues in Dispute Regarding Southwestern Bell Corporation’s Phase I Plan of Record, February 7, 2000, Attachment A (Transcript of February 1-2 OSS xDSL POR Workshop at 570-572) [CLEC POR Notification][Provided as Attachment A to Rhythms Reply Comments].

¹⁵ 47 U.S.C. § 271(d)(2)(A).

¹⁶ *BA-NY 271 Order* ¶ 83.

perform pre-ordering and ordering functions, and thus, to compete effectively with SWBT's retail operations.¹⁷

The Commission has established a two-step approach when evaluating whether a BOC is providing nondiscriminatory access to its OSS.¹⁸ The first step involves an assessment of whether the BOC has "deployed" systems capable of providing nondiscriminatory access and whether it is giving new entrants assistance and information necessary to understand how to implement and use those systems.¹⁹ In the second step, the Commission reviews the "operational readiness" of a BOC's OSS. The best, and preferable, measure of operational readiness is "actual commercial usage" but the Commission may consider the results of independent third-party testing of the BOC's OSS "when the level of commercial usage has not yet reached substantial volumes."²⁰ To demonstrate operational readiness, a BOC must show both that it is providing nondiscriminatory access to each OSS function (*i.e.*, preordering, ordering and provisioning, maintenance and repair, and billing) and that its OSS are fully capable of handling current and foreseeable demand levels for each of the three methods of market entry (resale, UNE and facilities-based).²¹ The comments submitted in this proceeding demonstrate that SWBT's OSS fail on all counts.

A. SWBT Failed to Deploy Systems Capable of Providing Non-discriminatory Access to OSS Functionalities as Required By Section 271

The record unambiguously demonstrates that SWBT has failed to deploy any mechanized OSS for CLECs' xDSL loop orders, instead relying entirely on manual processes that do not

¹⁷ Rhythms at 19; Covad at 4; NorthPoint at 13; MCI at 3.

¹⁸ BA-NY 271 Order ¶ 87.

¹⁹ BA-NY 271 Order ¶¶ 87-88.

²⁰ See DOJ Evaluation at 4, n. 3.

²¹ BA-NY 271 Order ¶¶ 87-89.

meet the Commission's OSS requirements.²² Other DSL providers echo Rhythms' initial comments expressing concerns about the inadequacies of SWBT's manual systems.²³ This concern is particularly acute because SWBT employs fully electronic systems for its own operations that enable its own retail orders to flow through its back office systems rapidly and without human intervention.²⁴ The DOJ agreed that SWBT's manual systems are inadequate and concluded that SWBT's performance in processing orders is declining and SWBT's performance in provisioning loops for CLECs is "markedly inferior" to provisioning for SWBT's retail operations.²⁵ The lack of parity is illustrated by the fact that even the most technologically advanced of SWBT's OSS interfaces, "its EDI ordering system, on average rejects (often manually) almost one of every two electronic CLEC orders it receives"²⁶ while "SWBT's own retail systems provide nearly instantaneous rejections for inaccurate or incomplete orders."²⁷ The disparity between SWBT's retail and CLEC support will not disappear soon because the fully mechanized OSS for xDSL loops ordered in the Rhythms/Covad arbitration award is nearly a year away,²⁸ and may be longer because SWBT may miss some of the OSS implementation deadlines.

SWBT's heavy reliance on manual processing of CLEC loop make-up requests and orders virtually guarantees that a large percentage of CLEC orders will be delayed or misrouted

²² Rhythms at 32-34, 36-37; ALTS at 27; AT&T at 64-65; CLEC Coalition at 18-20; MCIW at 4; NorthPoint at 14-15; Sprint at 16.

²³ Rhythms at 33 (manual access to loop make-up data), 33-34 (manual ordering for DSL loops); Covad at 27; CLEC Coalition at 16, 18-20, 22; NorthPoint at 17; MCI at 20.

²⁴ See Rhythms at 33; CLEC Coalition at 14-15.

²⁵ DOJ Evaluation at 17, 36, 42-43.

²⁶ AT&T at 61-62.

²⁷ AT&T at 62.

and that orders will be incorrectly rejected. If important notifications regarding access to loop makeup information, order rejections, and Firm Order Confirmations (“FOCs”) are delayed or misrouted by SWBT, a CLEC’s ability to furnish service to new customer locations will be substantially impeded. In at least one instance documented in the Telcordia Final Report, SWBT’s manual processing and the failure of its Local Service Center (“LSC”) personnel to type CLEC orders to completion resulted in orders being held in undetermined status and not provisioned.²⁹ Nearly all of the CLEC commenters have confirmed that improper rejections, delayed responses and misrouted communications are commonplace occurrences with SWBT’s current OSS.³⁰ As NorthPoint aptly observes: “The hodgepodge of systems, interfaces, faxes, emails and handwritten notes that constitute the current ordering process will, and frequently do, fail.”³¹ These inadequate OSS preclude CLECs from making a scalable entry to the market, a condition that will persist for the foreseeable future.

SBC has indicated that it will enhance EDI (“Electronic Data Interchange”) and DataGate, the interfaces SWBT uses to support pre-ordering and ordering for CLECs, to create a mechanized, flow-through system.³² However, those upgrades will not be fully in place until December 2, 2000.³³ Thus, during the evaluation period prior to SBC’s Section 271 application, EDI was available only on a stand-alone basis, used in conjunction with manual front-end and back-end systems. It was therefore impossible for the Texas PUC to properly evaluate the

²⁸Addendum to OSS Plan of Record for Pre-Ordering and Ordering of xDSL and Other Advanced Services, February 7, 2000 (Exhibit II Revised FMO Timeline) [POR Addendum][Provided as Attachment B to Rhythms Reply Comments].

²⁹ ALTS at 26, (citing Telcordia Final Report p. 69, 4.3.3.2.7.)

³⁰ See, e.g., Rhythms at 36; ALTS at 27; CLEC Coalition at 18-19; MCIW at 5; NorthPoint at 17-18; Covad at 35.

³¹ NorthPoint at 18.

³² POR Addendum at Exhibit II [Attachment B].

³³ POR Addendum at Exhibit II [Attachment B].

capability of SBC's EDI as an integrated portion of a mechanized flow through system for unbundled loop orders. As the record makes clear, no further EDI testing was performed on DSL-capable loop orders, other than xDSL-capable loops.

Despite the current unavailability of EDI and DataGate as part of a mechanized, real-time pre-ordering and ordering system for CLECs, SWBT relied upon its EDI system as evidence that it provides an electronic OSS at parity with what it provides to its retail side in proceedings before the Texas PUC.³⁴ The Texas PUC's conclusion that "SWBT has met its OSS obligations under Section 271 by providing non-discriminatory access to OSS" is without record support insofar as it relates to interfaces available to CLECs for pre-ordering, ordering and provisioning DSL loops.³⁵ Moreover, SBC has opposed testing of EDI in California as part of a Master Plan for its OSS implementation. Such actions call into question SBC's true commitment to providing a mechanized, real-time flow-through ordering system via EDI.

SBC also failed to demonstrate in its Section 271 application that it is providing sufficient support for LEX ("Local Service Request Exchange") and Verigate, two graphical user interfaces ("GUI") widely used by and critical to CLECs' ability to carry out pre-ordering and ordering activities.³⁶ The Texas PUC recognized the importance of these GUI to CLECs' ability to place orders for unbundled loops by stating that these interfaces are needed by "those CLECs who have not yet developed or have chosen not to develop an application to application interface."³⁷ Despite the fact that almost all facilities-based CLECs in Texas currently use

³⁴ Texas PUC at 33.

³⁵ Texas PUC at 27 The PUC's evaluation omits any discussion of specific pre-ordering or ordering issues for DSL service. *See also* Rhythms at 19-43; Covad at 2543.

³⁶ Rhythms at 28.

³⁷ Texas PUC at 33.

LEX,³⁸ Telcordia tested LEX only for resale, and not for UNEs.³⁹ SWBT has not yet committed to continue to support Verigate and LEX or to enhance those interfaces in the same manner that EDI will be enhanced.⁴⁰ If CLECs do not have access to the necessary user interfaces to access SWBT's EDI and DataGate systems, they will likely have to continue pre-ordering and ordering of unbundled loops on a partially manual basis indefinitely.

The record further demonstrates that SWBT has failed to provide adequate assistance and information to new entrants to enable them to utilize the OSS. In its initial comments, Rhythms reported that even after completing SWBT's "train the trainer" classes and workshops, Rhythms employees continued to have difficulty entering orders through SWBT's LEX GUI, because SWBT's training courses do not provide all of the information necessary for ordering loops.⁴¹ Other CLEC commenters have experienced similar problems.⁴² Clearly, SWBT fails to demonstrate that its systems meet this Commission's rigorous requirements for the provision of non-discriminatory access to OSS under checklist item 2.

B. SWBT Failed to Demonstrate Operational Readiness of Its OSS for CLEC xDSL-capable Loop Orders as Required By Section 271

The record clearly demonstrates that xDSL competition in Texas exists at extremely small, non-commercial volumes.⁴³ Therefore, SWBT attempted to demonstrate to the Texas PUC that its OSS were operationally ready through a testing program. However, that testing program failed, in numerous and substantive respects, to satisfy this Commission's criteria. Under the Commission's guidelines, SWBT must demonstrate, through either actual commercial

³⁸ CLEC Coalition at 16.

³⁹ ALTS at 8; CLEC Coalition at 18.

⁴⁰ Rhythms at 28.

⁴¹ Rhythms at 31.

⁴² See, e.g., AT&T at 61-62; CLEC Coalition at 36-37.

usage or the results of third party testing that its OSS is operationally ready, and must make a separate and comprehensive showing with respect to xDSL.⁴⁴ Yet, as DOJ recognizes, the tests conducted under the auspices of the Texas PUC were not carried out by an independent third-party testing entity and did not include sufficient volumes to yield meaningful or valid results.⁴⁵ The failure of SWBT to provide evidence and analysis of its OSS performance with respect to xDSL is, by itself, fatal to SWBT's showing with respect to checklist item 2. But the narrow scope of the testing is compounded by the poor showing of SWBT's OSS as well.

1. Test of SBC's OSS Were Not Conducted By An Independent Party

SBC's OSS was tested by Telcordia, Inc. an entity closely affiliated with, and formerly owned by SBC. Rhythms and other commenters have demonstrated that Telcordia has a substantial and ongoing commercial relationship with SWBT and its parent, SBC.⁴⁶ Indeed, it is the vendor for some of the software it tested⁴⁷ and continues to derive substantial revenues not only from SBC, but also from SBC's new advanced services affiliate.⁴⁸ There is, therefore, substantial reason to question whether it met this Commission's standards for independence and objectivity.⁴⁹

As compared with the KPMG test conducted in New York, CLEC Commenters and DOJ have demonstrated that Telcordia's test was "far less comprehensive, blind and independent and

⁴³ Texas PUC at 64; Rhythms at 39; CLEC Coalition at 5.

⁴⁴ DOJ Evaluation at 7-8; 10.

⁴⁵ DOJ Evaluation at 4-6.

⁴⁶ Rhythms at 42; AT&T at 73 (during Texas testing, Telcordia was designated by SBC as its expert consultant of choice in connection with a number of SBC/Ameritech merger conditions).

⁴⁷ AT&T at 73-73; MCI WorldCom at 40.

⁴⁸ Telcordia has sold at least one OSS software module, TIRKS, to SBC's new advanced services affiliate, Advanced Solutions, Inc. Rhythms at 42.

⁴⁹ AT&T at 73-74.

therefore provides much less persuasive evidence.”⁵⁰ CLECs were not permitted to participate fully in the development of the test plan,⁵¹ and Telcordia did not conduct a true military-style test.⁵² Unlike KPMG, Telcordia failed to build its own interfaces to SWBT specifications and assume the role of a pseudo-CLEC.⁵³ Instead, Telcordia used existing interfaces designed by AT&T and MCI WorldCom.⁵⁴ Both AT&T and MCI WorldCom believe that Telcordia’s OSS testing was adequate.⁵⁵

Moreover, Telcordia routinely and inappropriately shared its findings with SWBT prior to reporting them to the Texas PUC or CLEC participants.⁵⁶ In addition, Telcordia failed to independently test performance data supplied to it by SWBT,⁵⁷ failed to test or analyze any part of the OSS process once it required manual intervention, and prematurely closed OSS issues without verifying that problems had been corrected.⁵⁸ Thus, Telcordia’s testing was not of the rigorous type that a truly independent, third-party entity would reasonably be expected to carry

⁵⁰ DOJ Evaluation at 7; *see also* CLEC Coalition at 5; MCI WorldCom at 41-45; Sprint at 2.

⁵¹ *See, e.g.*, MCI WorldCom at 41: “CLECs were excluded for some parts of the [test planning] process and allowed to bring only two or three representatives to key technical meetings, preventing them from bringing subject matter experts when multiple subjects were discussed. SWBT, by contrast, was permitted to bring many representatives to each meeting.” *See also* AT&T at 74: “Texas CLECs were instructed not to make any advocacy filings with respect to the Texas Master Test plan before it was issued by Telcordia. And – when CLECs were allowed to comment on the draft – their comments were largely ignored.”

⁵² *See* MCI WorldCom at 42. Instead of demanding, as in the KPMG military-style test, that identified problems be remedied prior to retesting (aka “test until you pass”), Telcordia simply conducted a retest and, if problems did not reappear, assumed that SWBT had corrected the problems, even if SWBT had not implemented any changes in the interim.

⁵³ MCI WorldCom at 40; DOJ Evaluation at 4.

⁵⁴ MCI WorldCom at 40, Sprint at 13; DOJ Evaluation at 4.

⁵⁵ *See* AT&T at 73: “Telcordia’s OSS testing in Texas failed to meet the requirements of the *Ameritech Order*, and it lacks virtually all of the attributes of the KPMG testing that made it reasonable for the Commission to rely on the KPMG report.” *See* MCI WorldCom at 41: “CLECs other than those whose interface was being used [were] relatively blind to problems encountered during the test and to any fixes implemented, and [the test methodology] precluded Telcordia from accurately evaluating the comprehensiveness of SWBT’s documentation.”

⁵⁶ Allegiance at 9.

⁵⁷ Allegiance at 9; *see also* DOJ Evaluation at 7.

⁵⁸ ALTS at 7; CLEC Coalition at 16; Sprint at 14.

out. Because the validity and independence of Telcordia's testing is questionable, it cannot serve as a substitute for a demonstration by SWBT of non-discriminatory access to SWBT's OSS and unbundled loops at commercial volumes.

2. Tests of SWBT's OSS Included Volumes Too Small To Yield Meaningful Or Valid Results and Failed to Test All Necessary Functionalities

The data submitted by SWBT in its Section 271 application simply do not support SWBT's assertion that it can provide nondiscriminatory access to its OSS for pre-ordering, ordering and provisioning xDSL capable loops.⁵⁹ Telcordia's tests involved only nine Local Service Requests ("LSRs") for ADSL-capable loops plus seven LSRs for ISDN loops, used as a proxy for SDSL-capable loops. Only two of the nine LSRs for ADSL-capable loops and two of the seven LSRs for ISDN loops were successfully provisioned.⁶⁰ No other tests were conducted of any other type of xDSL capable loops. There is clearly no doubt that the number of loops tested was far too small to provide sufficient data to draw statistically significant conclusions about the adequacy of SWBT's OSS to handle xDSL capable loops.⁶¹

SWBT's preordering interfaces for xDSL fail to meet the Commission's OSS standards. Commenters agree that OSS preordering interfaces are discriminatory and rudimentary for xDSL services. For instance, of the more than a dozen pre-order capabilities SWBT claims to make available to all CLECs,⁶² Telcordia tested only five of the most rudimentary capabilities,⁶³ and

⁵⁹ SBC 271 Application at 39-40.

⁶⁰ Rhythms at 39-41; Sprint at 33;

⁶¹ Rhythms at 41; Telcordia Final Report at 9. See also Sprint at 34, quoting Texas PUC Commissioner Walsh's statement at the 11/4/99 Open Meeting: "As Telcordia noted, there is insufficient commercial volume and xDSL to measure compliance, and the test also did not measure the ability to support preordering, loop qualification, provisioning of DSL capable loops at parity with Southwestern Bell retail."

⁶² "SWBT makes the following pre-order capabilities available to all CLECs: address verification, access to customer service records and customer service inquiries, access to directory listing and directory assistance, determining service and feature availability, access to assignment, due date availability, dispatch requirements,

specifically did not include the one OSS capability of greatest significance to xDSL providers, DSL loop prequalification.⁶⁴ Thus, Telcordia's tests were inadequate to determine whether SWBT is providing non-discriminatory access to its OSS, as required by Section 271.

3. SWBT Is Not Providing CLECs With Non-discriminatory Access to Loop Makeup and Planning Data

Far from supporting SWBT's claim that it is providing CLECs with nondiscriminatory access to its OSS in connection with xDSL capable loops, the record demonstrates precisely the opposite. While SWBT has refused to provide pre-order electronic access to loop make-up information to its xDSL competitors, SWBT's own retail personnel have the ability to access directly loop make-up information and planning data electronically.⁶⁵ Despite SWBT's assertions in its Section 271 application that it was providing *all* loop makeup information to CLECs that it provided it itself,⁶⁶ SBC has since acknowledged it was not providing access to all such information. On February 1 and 2, 2000, SBC sponsored a two-day collaborative meeting to address CLEC concerns about its future plans to support CLEC pre-ordering and ordering systems for advanced services including xDSL.⁶⁷ CLECs requested a list of 18 data elements they require during loop qualification that SBC currently makes available to its internal ADSL

access to PIC list, access to LPIC list, access to CLLI, access to CFA for UNEs, NC/NCI code for UNEs, and DSL loop prequalification." Texas PUC at 33.

⁶³ "Telcordia observed that CLEC queries resulted in satisfactory performance in pulling each of the following pre-order functionality's: (1) street address validation; (2) telephone number information; (3) services and features information; (4) due date information; and (5) customer service record (CSR) information." Texas PUC at 34.

⁶⁴ Covad at 46-47.

⁶⁵ See, e.g., IP Communications at ¶¶ 6-7.

⁶⁶ SBC Application for Section 271 Authority, Affidavit of Carol Chapman Affidavit at ¶ 28. "A completed Loop Qual Form contains *all* of the relevant information possessed by SWBT about the status of a particular loop, and *all* of the information that a carrier needs to select the particular DSL technology to provide to its end user customer." (emphasis added); see also Conway Affidavit ¶ 101; *SBC 271 Application* at 42.

⁶⁷ SBC is required to sponsor such collaborative meetings under Paragraph 15(c)(1) of the Merger Conditions Order.

operations, but not CLECs. SBC agreed to provide all 18 data elements in a new release of EDI and DataGate scheduled for March 18, 2000. SBC agreed to provide the following list of data elements: 1) presence/location of repeaters, 2) quantity of repeaters, 3) type of repeaters, 4) type of plant (aerial or buried), 5) composition of loop (copper or fiber), 6) portion of loop of each composition type, 7) availability of spare loops, 8) quantity of bridged-taps, 9) number of occurrences of bridged taps, 10) quantity of low pass filters, 11) location of low pass filters, 11) quantity of range extenders, 12) location of range extenders, 13) number of gauge changes, 14) location of pair gain, 15) location of digital loop carrier (“DLC”), 16) quantity of DLC, 17) presence of remote switching unit, and 18) type of remote switching unit.⁶⁸

In addition to failing to provide to loop makeup information at parity between CLECs and internal ADSL operations, SWBT also fails to provide access to such information at parity. SWBT’s internal personnel have direct, electronic access to all loop makeup and planning data. Due to this imbalance, the Arbitrators in the Rhythms/Covad arbitration in Texas ordered SWBT to implement significant and substantial changes to its OSS to come into compliance with its requirements under the Act and several orders of the Commission.⁶⁹ However, SWBT has provided no details regarding the ways in which it will implement the requirements of the Arbitration Award to make available to CLECs access to any information, records and databases such as LFACs, LEAD, and TIRKS, which are available currently to SWBT personnel.⁷⁰

Because SWBT is providing information to its internal DSL operations that are not available in the same scope or through the same electronic systems, SWBT’s OSS for ordering DSL loops discriminate against CLECs.

⁶⁸ CLEC POR Notification, Attachment A (Transcript of February 1 at 140; 142-144) [Attachment A to Rhythms’ Reply Comments]; POR Addendum at 1-2 [Attachment B to Rhythms’ Reply Comments].

⁶⁹ Covad at 5.

II. SWBT IS NOT PROVISIONING XDSL CAPABLE LOOPS ON A NONDISCRIMINATORY BASIS AS REQUIRED BY CHECKLIST ITEM FOUR

The record clearly demonstrates that SWBT is not presently providing xDSL capable loops on a nondiscriminatory basis.⁷¹ Despite assurances from SWBT that it is provisioning loops on a non discriminatory basis, SWBT's performance data and CLECs' commercial experiences strongly indicate otherwise.⁷² SWBT's OSS fail to provision unbundled loops for xDSL services on a non-discriminatory basis primarily for three reasons: SWBT's OSS is manual, and thus prone to serious errors; SWBT's OSS is tailored to support only SBC's chosen single type of DSL; and SWBT's OSS is programmed to reject CLEC loop orders based on arbitrary and improper criteria.

A. SWBT Failed to Provide Complete Data Regarding Its Performance In Provisioning Loops For Rhythms

The scant data provided by SWBT on xDSL provisioning is, as DOJ concludes, wholly unreliable.⁷³ SWBT apparently attempted to correct its deficiencies retroactively by providing completely revised data for xDSL after the close of initial comments in this proceeding.⁷⁴ That late-filed data was only one of 30 ex parte filings from SWBT comprising more than 2,000 pages of material.⁷⁵ Although some of the data submitted by SWBT in its ex parte filings was in

⁷⁰ Arbitration Award at 60-62.

⁷¹ MCI WorldCom at 51, citing Southwestern Bell Provisioning & Maintenance Report (December 1999)(McMillon & Sivori Decl., Attachment 19).

⁷² Rhythms at 52-53; CLEC Coalition at 40-41.

⁷³ DOJ Evaluation at 4-7; 17.

⁷⁴ DOJ Evaluation at 15-16 and n.38; SBC ex parte dated February 2, 2000.

⁷⁵ According to the Commission's Electronic Comment Filing System ("ECFS"), viewed on February 20, 2000, SBC's ex parte notices filed on or before February 11 represent more than one-fourth of the total number of documents filed to date in this proceeding. This total does not include several submissions posted on SBC's website but not yet entered into the Commission's ECFS, such as the submissions of February 14, 17 and 18. Ironically, the February 17 ex parte, not available on the Commission's website as of February 20, purports to "alert interested parties, who are not already aware, that Southwestern Bell makes available for public review copies of ex partes it

response to requests from the Commission, much of it was an improper attempt to supplement its application with material information that should have been included in SWBT's application at the time of filing. For example, SWBT's ex partes filed on January 13 and 14, 2000 contained revised November performance data for CLECs. Clearly, such performance data are at the heart of SWBT's affirmative case seeking approval of its Section 271 application, yet SWBT either did not have the data compiled or forgot to include it in the application.

The Commission should not allow SWBT to gain 271 authority by continuously supplementing a deficient application in violation of the Commission's rules that require a BOC's Section 271 application to be complete and thorough.⁷⁶ This so-called "complete as filed" rule is necessary to ensure that the Commission can make a thorough review of an application in the statutory 90-day timeframe. The timing and manner of SWBT's ex parte submissions have made it extremely difficult, if not impossible, for interested third parties to review and comment upon the data presented – an outcome that is precisely the opposite of that intended by the Commission in adopting ex parte rules.⁷⁷ The DOJ has highlighted one such ex parte submission in its evaluation. In early February, after comments were due, SWBT submitted an ex parte communication containing revised performance data for PM 55.1, correcting a processing error that had affected at least 900 of NorthPoint's DSL loop orders. However, the ex parte "did not expressly note that the changes in the data had been made."⁷⁸

has filed in this docket to provide additional substantive information regarding Southwestern Bell's application." SBC February 17 ex parte, downloaded from www.sbc.com on February 18, 2000.

⁷⁶ *Ameritech Michigan Order* at ¶ 51.

⁷⁷ The Ex Parte rules are intended to "ensure[e] fairness in Commission proceedings." In the matter of Amendment of 47 C.F.R. § 1.1200 et seq., Concerning Ex Parte Presentations in Commission Proceedings, *Report and Order*, 12 FCC Rcd 73448, 7349 (rel. March 19, 1997).

⁷⁸ DOJ Evaluation at 16, n. 38.

The Commission should not allow SWBT to end run its rules by submitting a deficient application and then supplementing it with missing, material data. Instead, the Commission should reject SWBT's application and require SWBT to wait until such time that effective performance measures for DSL service are in place in Texas⁷⁹ and SWBT has an adequate amount of data in place and ready to submit to the Commission. However, if the Commission decides to review SWBT's application on the merits, the Commission should not consider or give any weight to the *ex parte* submissions of SWBT.

Rhythms was able only recently to access and review the performance measurement data reported by SWBT regarding Rhythms. SBC had indicated that it would post CLEC performance data on its secure website.⁸⁰ Rhythms had checked SBC's website periodically over the last three months to find the data,⁸¹ however, Rhythms found only pointers for performance data regarding other CLECs.⁸² Rhythms contacted its account manager regarding this problem, but before the account manager responded, Rhythms' data appeared on the website on February 14, 2000, two weeks after Rhythms filed opening comments in the Commission's Section 271 proceeding.⁸³ After reviewing the data, Rhythms discovered that, just like other CLEC Commenters found, SWBT had failed to provide complete or correct data.

⁷⁹ The Arbitrators in the Rhythms/Covad arbitration recognized the lack of useful PMs for DSL service and directed the parties to submit a set of proposed performance measures. The submitted their proposals on February 21, 2000. It will likely take time, and possibly hearings, for the parties to reach consensus on appropriate PMs and benchmarks.

⁸⁰ Supplemental Affidavit of Ann M. Lopez in Support of Reply Comments of Rhythms Links, Inc., ¶ 2 [Lopez Affidavit][Appended as Attachment C].

⁸¹ Lopez Affidavit at ¶ 2.

⁸² Lopez Affidavit at ¶ 2.

⁸³ Lopez Affidavit at ¶ 2.

For example, SWBT provides no report for PM 6, which apparently reports the average time to return a FOC, on the SBC website.⁸⁴ SWBT does provide a report for a PM 56, which reports the percentage of loops installed in a specified number of days, but it does not include data for DSL loops.⁸⁵

In other instances, SWBT provided a report for Rhythms, but the entire report was populated with zeros. For example, SWBT's report regarding Rhythms for PM 55.1, which reports average installation interval for DSL loops, reports 0 for all fields.⁸⁶ These data are inconsistent with Rhythms' data, which show that BEGIN CONFIDENTIAL*** ***END CONFIDENTIAL loops were provisioned between October and December 1999.⁸⁷ An installation interval should have been reported for each loop.⁸⁸

B. SWBT's Performance Data Are Inconsistent With Rhythms' Data

Given all the shortcomings in SWBT's back office systems, it should come as no surprise that Rhythms and other CLECs have identified significant discrepancies between performance data reported by SWBT and the CLECs' own records. Rhythms repeatedly attempted to locate its own performance data on SBC's secure website, but information was not posted until February 14, 2000,⁸⁹ in violation of Commission orders. Although the delayed availability of the performance data prevented Rhythms from performing a complete review of the data, some discrepancies were readily identified. Rhythms has determined that SWBT's data are incorrect for many performance measures.

⁸⁴ Lopez Affidavit at ¶ 7.

⁸⁵ Lopez Affidavit at ¶ 9.

⁸⁶ Lopez Affidavit at ¶ 8.

⁸⁷ Lopez Affidavit at ¶ 8.

⁸⁸ Lopez Affidavit at ¶ 8.

⁸⁹ Lopez Affidavit at ¶ 2.